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09/763,173	04/30/2001	Carmelo Giuffre	KARAGHIOSOFF	3489

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James C Wray  
Suite 300  
1493 Chain Bridge Road  
McLean, VA 22101

EXAMINER

MUSSER, BARBARA J

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/763,173

**Applicant(s)**

GIUFFRE, CARMELO

**Examiner**

Barbara J. Musser

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-29 and 32-40 is/are allowed.
- 6) ☒ Claim(s) 1,3,5-21,23,30 and 31 is/are rejected.
- 7) ☒ Claim(s) 2,4 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 9 and 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not disclose how elastic dampers work in the context of the invention. While elastic dampers per se are known, the specification does not indicate where they are located, how they are used, or how they operate in relation to the specific parts of the invention.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3, 8-10, 30, and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 3, it is unclear how the orientation of the inner surface of the pipe and the dripper unit are varied at will as applicant has not described how this occurs.

Regarding claim 8, it is unclear how the forces are similar and in what manner. It is unclear what range is encompassed by similar. It is not clear where in the specification the claim terminology is defined. It is unclear how this claim further limits claim 7 as both appear to indicate the force before contact is the same as the force after contact. It is suggested this claim be canceled.

Regarding claims 9 and 31, it is unclear where the “elastic dampers” are located or how they act in the context of the invention. While the specification has support for elastic damping means, it is unclear how they act on the dripper units or what precisely they do. Regarding claim 31, it is unclear what is meant by friction means. It is suggested these claims be canceled.

Regarding claim 10, it is unclear what is meant by the claim as the language applicant has pointed to does not explain the claim terminology. It is unclear what is meant by the dripper units being joined to the dragging means by a frictional junction force as the dripper units are only joined to the wall of the extruded tube. Joining indicates attachment, and the dripper units are only attached to the extruded tube not the advancing means. It is suggested this claim be canceled.

Regarding claim 30, it is unclear what is meant by “when a predetermined pressure is attained” as the examiner cannot find an explanation of the claim language in the specification. This term has not been defined by the specification. While applicant has placed the language of the claim in the specification, this does not explain the meaning of the phrase, but simply provides support for it. It is unclear what is meant by the means being “driven in the same way”. It is suggested this claim be canceled.

***Drawings***

4. The drawings were received on 12/23/03. These drawing changes are approved.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 5, 20, 21, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Mehoudar(U.S. Patent 5,324,371).

Mehoudar discloses an apparatus for forming a drip irrigation pipe having an extruder(2), a calibrator(24), dripper feeding means(17), and conveying means for the dripper units(4). The dripper units are moving at a second speed which is greater than the first speed the pipe is originally extruded at.(Abstract)

Regarding claims 5 and 21, since the dripper unit contacts the pipe upstream of the calibrator, it contacts it in the conically narrowed section.(Col. 4, ll. 38-41)

Regarding claim 23, Mehoudar discloses using a stick-slip motion to advance the dripper units.(Figure 2)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6-8 and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehoudar in view of Gorney et al.

Mehoudar teaches all the limitations of claim 1 from which claims 6-8 depend, but does not teach a compressing means for exerting an external compression on the pipe. Gorney et al. discloses external pressing means(24, 30) which are passively driven.(Figure 1) The distance between the pressing means(30) and the pipe wall is adjustable(32).(Col. 7, ll. 39-40) The rollers can be replaced by a flat pressure surface.(Col. 7, ll. 51-52) It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an external compression means in Mehoudar since that would insure proper bonding of the dripper unit and pipe wall.(Col. 7, ll. 36-40)

Regarding claims 7 and 8, Gorney et al. discloses the dripper units press against each other, advancing them. Since the dripper unit not yet contacting the pipe will continue to press against the one contacting the wall until it itself contacts the wall, the pushing force continues with the same force after the first dripper unit contacts the wall as before.

Regarding claim 10, friction between the dripper unit and the conveying means slows the speed of the dripper units.

Regarding claim 11, Gorney et al. discloses the conveying means extend further into the pipe to insure proper bonding as they are needed as a counter pressure to the external compression means.

Regarding claim 12, the external compression means can be stationary.(Col. 7, II. 51-52)

Regarding claims 13 and 14, one in the art would appreciate that the pushing means can be driven passively by their motion as the reference is silent as to whether they are driven or not and since this would eliminate the necessity of controlling another device.

Regarding claim 16, Mehoudar discloses stationary slide abutments.(Figure 2)

Regarding claim 17, Gorney et al. does not state that the conveying means for the dripper units move passively, but rather uses a stationary slide.(Figure 2A) However, the reference does disclose the external press means can be either passive rollers or stationary means.(Col. 7, II. 51-52) It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the stationary conveying means of Gorney et al. with passive rollers since Gorney et al. discloses these are well-known alternatives in the art(Col. 7, II. 51-52) and since the use of rollers would reduce friction.

Regarding claim 18, Gorney et al. does not state that the conveying means for the dripper units move actively, but rather uses a stationary slide.(Figure 2A) However, the reference does disclose the external press means can be either passive rollers or stationary means.(Col. 7, II. 51-52) Driven rollers are well-known alternatives to passive rollers and it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the stationary conveying means of Mehoudar with active rollers since these are well-known alternatives to passive roller and Gorney et al.

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discloses that passive rollers and stationary means are well-known alternatives in the art (Col. 7, ll. 51-52).

Regarding claim 19, while the references do not indicate the external compression means can be driven at different speeds, one in the art would appreciate that different extrusion speeds are possible and that one in the art would use external compressions means that could be varied in speed with the variation in speed of the extruder.

***Allowable Subject Matter***

9. Claims 24-29, and 32-40 are allowed.
10. Claims 2, 4, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if claim 2 were added to claim 1.
11. Claim 30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
12. The following is a statement of reasons for the indication of allowable subject matter: upon reconsideration, the claims are considered to require that the dripper units move faster than the wall of the pipe and not merely that they are capable of moving faster than the wall of the pipe. As such, the prior art of record does not teach or fairly suggest feeding the dripper units such that they contact the wall of the drip irrigation hose at a faster speed than the wall of the hose.



### ***Response to Arguments***

There are no arguments regarding the 112, 2<sup>nd</sup> rejections.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cohen(U.S. Patent 6,461,468) is cited as a possible interference with applicant's claims, specifically see claim 2 of Cohen. Applicant has not provoked an interference with Cohen, and claims present are still being rejected, so an interference has not been set up.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Barbara J. Musser** whose telephone number is **(571) 272-1222**. The examiner can normally be reached on Monday-Thursday; alternate Fridays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571)-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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BJM

  
JEFF K. AFTERGUT  
PRIMARY EXAMINER  
GROUP 1300